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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

JAN 30 2003

FILE: [redacted] Office: LIMA, PERU Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(B)(v), and under Section 212(i) of the Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. It is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the prior order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Peru who was found by a consular officer to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure a visa for admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and seeks the above waiver in order to travel to the United States to reside with her spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant's spouse states that medical documentation he submitted with the appeal had not been taken into consideration in the denial of the appeal. He submits a status update from his psychologist.

The record reflects that the applicant initially entered the United States as a nonimmigrant visitor for pleasure on May 19, 1998 with authorization to remain for six months. She remained longer than authorized and did not depart the United States until January 2000. The applicant subsequently attempted to procure (re)admission into the United States on February 6, 2000 by presenting her passport containing a fraudulent Peruvian immigration stamp in order to conceal her prior unlawful presence. The applicant was allowed to withdraw her request for admission and returned to Peru.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
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> * * *
>
> (6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-
>
> * * *
>
> (C) MISREPRESENTATION.-

[redacted]

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

* * *

(9) ALIENS PREVIOUSLY REMOVED.-

* * *

(B) ALIENS UNLAWFULLY PRESENT.-

(i) IN GENERAL.-Any alien (other than an alien lawfully admitted for permanent residence) who-

* * *

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen

> or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

In Matter of Cervantes-Gonzalez, 21 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; (4) the financial impact of departure from this country; (5) and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994).

On appeal, the applicant's spouse submitted letters of support from his mother, sister, and brother's girlfriend requesting that the applicant be permitted to return to the United States to reside as they all missed her very much. In addition, the applicant's spouse submitted a letter indicating that separation from the applicant has been an emotional struggle for them both. He stated that the couple would like to start a family but that he cannot imagine trying to raise a child when the parents live over 400 miles apart.

The record contains a letter from [redacted] Ph.D.,LP, dated January 10, 2002, which indicates that the applicant's husband, [redacted] has been her patient since November 13, 2001. [redacted] stated that [redacted] was assessed as demonstrating symptoms of an anxiety disorder with depression including distractibility, continuous worry, apprehension, difficulty concentrating, weight loss, disturbed sleep, fatigue and loss of appetite, problems consistent with those of a person who has experienced a significant loss. At that time, the doctor

stated that these manifestations were in the moderate range, but noted that they were increasing in intensity.

On motion, [redacted] submits a letter from [redacted] dated October 25, 2002, stating that [redacted] has been attending weekly therapeutic sessions since November of 2001. She further notes that [redacted] symptoms have increased in intensity since they began their counseling sessions and recommends that Mr. [redacted] continue the weekly counseling sessions until he can be reunited with his wife.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to travel to the United States to reside at this time. Though Mr. Davies is apparently experiencing emotional difficulties, he is under a doctor's care and is receiving treatment. In addition, no evidence was provided as to why Mr. Davies could not relocate to Peru to be with his wife.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and section 212(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden.

ORDER: The Associate Commissioner's order dated August 19, 2002 dismissing the appeal is affirmed. The application is denied.